

LUCYANN W. CAMERON

IBLA 76-615

Decided March 4, 1977

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying applicant's petition for reinstatement of oil and gas lease. M 31224 (SD).

Affirmed.

1. Oil and Gas Leases: Reinstatement--Reinstatement: Generally

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed 6 days after the due date is not reasonably diligent.

2. Oil and Gas Leases: Reinstatement--Reinstatement: Generally

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However, where appellant has entrusted payment to an agent who becomes ill, and a subagent, who assumes the agent's responsibilities neglects to make payment timely, the illness of the agent is not the proximate cause of the late payment where no connection is made between the date of the agent's illness and the due date of the rental and a decision denying reinstatement will be affirmed.

3. Oil and Gas Leases: Reinstatement--Reinstatement: Generally

The burden of proving that the late payment was either justifiable or not due to a lack of reasonable diligence is on the lessee, and this burden includes showing the proximity of the occurrence to the anniversary date.

APPEARANCES: Lucyann W. Cameron, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Appellant, Lucyann W. Cameron, has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), denying her petition for reinstatement of a nonproducing oil and gas lease, N 31224 (SD). The lease was terminated automatically, by operation of law, for failure to pay the annual lease rental on or before April 1, the anniversary date of the lease. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a).

Payment of the lease rental was received by the BLM on April 9, 1976. The envelope in which it was sent bore the postmark "April 6, Costa Mesa, California." The check was drawn on the account of James B. MacDonald, by Mrs. James B. MacDonald. Record title to the lease is in the name of Lucyann W. Cameron.

On April 21, 1976, a letter, along with a rental check for \$ 180, was received from one Laurie MacDonald. Laurie MacDonald stated James B. MacDonald, her father, had acquired the lease for Lucyann W. Cameron. Furthermore, she said James B. MacDonald had suffered a massive stroke, and surgery was required to remove a blood clot from his head. The date of Mr. MacDonald's illness was not stated. Laurie MacDonald inferred she was now handling her father's business affairs, and because she is a novice in the business world it has taken her some time to sort out business matters. As a result the lease payment was mailed out late.

The BLM treated the letter from Laurie MacDonald as a Petition for Reinstatement of the lease and denied the petition. On May 10, 1976, the BLM received a letter from Lucyann Cameron which restated the substance of the letter from Laurie MacDonald. Appellant stated that James MacDonald had been handling her business affairs, and that Ms. MacDonald carried on after the stroke.

The statute governing reinstatement of terminated oil and gas leases expressly provides that it must be "shown to the satisfaction of the Secretary of the Interior that such failure (to pay the rent timely) was either justifiable or not due to a lack of reasonable diligence * * *" 30 U.S.C. § 188(c) (1970).

[1] Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-2. The Board has previously held that a payment mailed 6 days late does not satisfy the reasonable diligence test. Vern H. Bolinder, 17 IBLA 9 (1974).

[2] Late payment is justifiable when caused by extenuating circumstances outside the control of the lessee occurring in close proximity to the anniversary date of the lease. Pauline G. Thornton, 17 IBLA 251, 253 (1974). Further, the extenuating circumstances must be the proximate cause of the lessees' failure to make timely rental payment. See M. J. Harvey, 19 IBLA 230 (1975); Pauline G. Thornton, *supra*; The Heirs of John W. Firth, 17 IBLA 125 (1974). As we have seen, the appellant did not relate the date of Mr. MacDonald's illness to the anniversary date of the lease.

This Board has held that where the lessee, or the lessee's agent, has entrusted the timely payment of the lease rental to another, the negligent failure of the agent and/or subagent to accomplish payment will not excuse or justify the lessee. Stanley J. Pirtle, 26 IBLA 348 (1976), where the responsibility for payment was entrusted to a business associate; Lucille Lipphardt, 24 IBLA 81 (1976), where the lessee entrusted the rental payment to a friend; Charles C. Sturdevant, 20 IBLA 280 (1975), where the duty to pay was assigned to an employee; A. O. Holley, 14 IBLA 264 (1974), where the lessee entrusted payment to a firm of certified public accountants.

The burden of proving that the late payment was either justifiable or not due to a lack of reasonable diligence is on the lessee. 43 CFR 3108.2-1(c)(2). Here, neither the lessee, her agent, nor her subagent, has shown the proximity of the occurrence to the anniversary date.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appeal from is affirmed.

Martin Ritvo

Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

According to the legislative history of 30 U.S.C. § 188(c) (1970), if appellant had sufficiently instructed Laurie MacDonald as to the payment, then reasonable diligence may have been exercised. Lone Star Producing Company, 28 IBLA 132, 143-46 (1976) (dissent). Alternatively, if the stroke suffered by James MacDonald was in sufficiently close proximity to have caused Laurie MacDonald's failure to make timely payment, then the failure was justifiable. See Santor v. Morton, 383 F.Supp. 1265, 1267 (D. Wyo. 1974). Unless one of these factual situations can be shown, appellant must be denied relief.

Joseph W. Goss

Administrative Judge.

